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AD HOC COMMITTEE ON THE ELABORATION
OF AN INTERNATIONAL CONVENTION
DEALING WITH THE SAFETY AND
SECURITY OF UNITED NATIONS AND
ASSOCIATED PERSONNEL
New York, 28 March-8 April 1994
Agenda item 5

ELABORATION, PURSUANT TO PARAGRAPH 1 OF GENERAL ASSEMBLY RESOLUTION 48/37 OF 9 DECEMBER 1993, OF AN INTERNATIONAL CONVENTION DEALING WITH THE SAFETY AND SECURITY OF UNITED NATIONS AND ASSOCIATED PERSONNEL, WITH PARTICULAR REFERENCE TO RESPONSIBILITY FOR ATTACKS ON SUCH PERSONNEL

Working document submitted by Denmark, Finland, Iceland, Norway and Sweden

The Nordic countries have always been major contributors to the United Nations peace-keeping operations, and continue to be. Drawing upon this experience, the Nordic countries wish to contribute to the deliberations of the Ad Hoc Committee by submitting a set of elements which we believe should be included in any new legally binding instrument concerning the safety and security of United Nations and associated personnel.

The Nordic countries recognize the constructive contributions already made by New Zealand and Ukraine and believe that, through a combined effort of all participating States, the Ad Hoc Committee will be able to bring its work to a successful conclusion.

First element

(Conflict situations)

The new instrument should apply in all situations where United Nations or associated personnel are operating, be it in time of peace or during armed conflict, whether of an international or non-international character.

Second element

(United Nations personnel)

The persons covered by the new instrument should comprise all personnel authorized by the United Nations to participate in a peace-keeping or a peace-enforcement operation.

Personnel working for intergovernmental and non-governmental organizations undertaking humanitarian relief activities in areas where a United Nations operation has been launched should also be provided adequate protection.

Third element

(General safety clause)

Besides the protection offered under the new instrument, United Nations and associated personnel remain under the protection and authority of the principles of international law derived from established custom, from the principles of humanity and from the dictates of public conscience. The exclusive international character of said personnel shall always be respected.

Nothing in the new instrument should create the implication that United Nations or associated personnel constitute a legitimate target for belligerent action.

Fourth element

(Armed conflicts)

The parties to an armed conflict shall at all times distinguish between the civilian population and combatants and between civilian objects and military objectives and accordingly shall direct their operations only against military objectives.

United Nations and associated personnel or their property shall not be made the object of attack.

United Nations personnel shall at all times carry the distinctive emblem of the United Nations.

Fifth element

(Basic protection)

United Nations and associated personnel shall enjoy, as a minimum, protection from the following acts which shall remain prohibited at any time and in any place whatsoever:

(a) Violence to the life, health or physical or mental well-being of persons, in particular:

(i) Murder;

(ii) Torture of all kinds, whether physical or mental;

(iii) Corporal punishment;

(iv) Mutilation;

(b) Outrages to personal dignity, in particular humiliating and degrading treatment, enforced prostitution and any form of indecent assault;

(c) The taking of hostages;

(d) Collective punishment;

(e) Threats to commit any of the foregoing acts.

This protection is without prejudice to that afforded by other instruments or customary rules of international humanitarian law as well as to any person's right to self-defence.

Sixth element

(Repression of breaches)

1. The States Parties undertake to enact and enforce any legislation necessary to provide effective penal sanctions for persons committing, or ordering to be committed, any of the following acts (grave breaches), if committed against persons or property protected by the new instrument:

- Making the United Nations personnel, objects and localities the target of attack;
- Wilfully causing great suffering or serious injury to the body or health of a protected person, including rape;
- Unlawful deportation or confinement of a protected person;
- Wilfully depriving a protected person of the right of fair trial;
- The taking of hostages.

2. Each State Party shall be under the obligation to search for persons alleged to have committed, or to have ordered to be committed, the breaches listed in paragraph 1, and shall as a first step bring such persons, regardless of their nationality, before an international criminal tribunal having jurisdiction with respect to the alleged breaches. It may also try these persons before its own court or, in accordance with the provisions of its own

legislation, hand such persons over for trial to another State Party concerned, provided such State Party has made out a prima facie case.

3. In all circumstances, the accused persons shall benefit from the safeguards of proper trial and defence.

Seventh element

(Dissemination and education)

The new instrument must provide for dissemination of the basic rules of international humanitarian law, in particular among armed forces, as well as for the teaching of those rules to all members of society. Legal advisers should as a general rule be attached to major military units.

Eighth element

(Reservations and accession)

1. The new instrument should not allow for reservations to any of its provisions.

2. The instrument should be open for accession by the United Nations and other international and regional organizations. It should also include provisions for an authority of a non-Party to undertake to follow its rules, without such an undertaking in any way implying a formal recognition of that non-Party.

If these and other elements could be thoroughly debated and identified during the first session of the Ad Hoc Committee, the relevant elements could be cast in the form of concrete articles - many of which are already available in existing drafts - to be considered in depth during the Committee's next session, with a view to submitting them for consideration and adoption during the forty-ninth regular session of the General Assembly in 1994.